CASE NO. 83-156

UNITED STATES SUPREME COURT

October Term, 1983

BOYD VEENKANT,
Plaintiff-Petitioner,

-vs-

JUDGE IRWIN H. BURDICK,
JUDGE GEORGE R. CORSIGLIA,
ATTORNEY MAURICE N. BLAKE,
ATTORNEY STEVEN RABINOWITZ,
ATTORNEY CLAYTON F. FARRELL,
ATTORNEY JOHN CASARE FRANCO,
Defendant-Respondents.

Sixth Circuit
No. 82-1583

District Court
No. K81-101CAA

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES

The parties to Veenkant v Blake, et al, identified by Petitioner as "Case No. 1" are:

Judge Irwin H. Burdick
Judge George R. Corsiglia
Attorney Maurice N. Blake
Attorney Steven Rabinowitz
Attorney Clayton F. Farrell
Attorney John Casare Franco

CONCISE STATEMENT OF JURISDICTIONAL GROUNDS

Respondent submits that, though Petitioner cites this Court to numerous federal and state statutes, jurisdiction is presumably based upon 28 USC §1343, the "substance" of the claim being some combination of 42 USC §1983, §1985 and/or §1986.

COUNTER STATEMENT OF THE CASE

In order to understand the Petitioner's claim in the instant case, identified in Petitioner's Brief as "Case No. 1", it is necessary to understand something of what District Court Judge Benjamin Gibson described as the "long history" of this case. (See District Court Opinion, attached Appendix, p 2a).

The underlying basis for Plaintiff/Petitioner's present complaint stems from a 1965 car accident which Mr. Veenkant was involved in. That accident gave rise to a lawsuit tried in Allegan County, Michigan Circuit Court in 1970, entitled *Boyd Veenkant* v *Charles F Armitage*, No. 2-1225 (hereafter *Armitage*). Mr. Veenkant, as plaintiff in the action, was represented by Attorney Alphonse Lewis, Jr. The *Armitage* suit was concluded when the jury returned its verdict against plaintiff Veenkant, that verdict being "no cause for action". Thereafter, Plaintiff's own attorney filed a motion for new trial, which was denied by the circuit court. (See a copy of that motion, originally attached as an exhibit to Defendant Blake's motion to dismiss, Appendix, p 20a).

At the heart of Mr. Veenkant's present action is his stubbornly held belief that someone has stolen, converted, or is somehow withholding from him, a motion for new trial filed by the *defense* attorney (Charles E. Starbuck) in the *Armitage* action. That is, Mr. Veenkant believes the original of Attorney Starbuck's motion for new trial has been stolen from the records of the Allegan County Circuit Court and that his hand drafted copy of such a motion was later "converted" by Attorneys Blake and/or Rabinowitz. Attorney Starbuck, by way of affidavit filed in yet another lawsuit instituted by Mr. Veenkant in Wayne County, Michigan Circuit Court action against Attorneys Blake and Rabinowitz, indicates that he never filed any motion for new trial in the *Armitage* case (see a copy of that affidavit, originally attached as an exhibit to Defendant Blake's motion to dismiss, Appendix, p 25a). Attorneys Farrell and

Franco, to Petitioner's way of thinking, became involved in the "plot" when they represented Attorneys Blake and Rabinowitz, respectively, in the Wayne County Circuit Court suit and were informed by Mr. Veenkant of the "theft" of the motion, but subsequently took no action. Wayne County Circuit Court Judge Burdick and Allegan County Circuit Court Judge Corsiglia are allegedly to be held liable on a similar theory, i.e. they were told by Mr. Veenkant that the document was missing and they took no action.

Significantly, Mr. Veenkant's attorney's motion for new trial in the *Armitage* action reads at ¶4:

> "That the Court erred in ruling that the injury sustained by Plaintiff was an aggravation rather than a re-injury to a part of the body that was previously injured slightly without any serious consequences to Plaintiff."

The new trial motion supposedly filed by Attorney Starbuck and now allegedly missing from the court file, because Mr. Veenkant is convinced he once saw it there and because he once allegedly handcopied that motion, is said to have asked for:

> " . . . That this Motion was asking for a new trial aggrovation rather than a re-injury to a part of the body that was previously injuryed slightly without any serious consequence to Plaintiff." [sic] (See Plaintiff's Complaint, ¶23 and ¶53)

Plaintiff/Petitioner is unabashedly claiming that this motion was drafted by Attorney Starbuck (see Plaintiff's Complaint, ¶¶27, 31, 42, 44, 52, 54).

Several years after entry of the no cause, Mr. Veenkant allegedly retained Attorneys Blake and Rabinowitz for the purpose of pursuing a delayed appeal. Plaintiff/Petitioner alleges he retained Attorney Blake to secure a transcript of the 1970 *Armitage* trial. Subsequently, these attorneys attempted to return a portion of Petitioner's retainer and

informed Mr. Veenkant of their disinterest in pursuing the case (see Judge Gibson's Opinion, Appendix, p 2a).

Thereafter, Mr. Veenkant commenced an action against Attorneys Blake and Rabinowitz in Wayne County, Michigan Circuit Court for malpractice, breach of contract, and conversion, *Boyd Veenkant* v *Maurice N Blake and Steven Rabinowitz*, No. 79-924505 CZ (see a copy of that complaint, originally attached as an exhibit to Defendant Blake's motion to dismiss, Appendix, 26a). On/or about August 14, 1979, Attorney Clayton F. Farrell, one of the Defendant-Respondents herein, filed an Appearance on behalf of Maurice N. Blake in the Wayne County Circuit Court action (see a copy of that appearance, originally attached as an exhibit to Defendant Blake's motion to dismiss, Appendix, p 29a). Likewise, Respondent Attorney John Franco represented Steven Rabinowitz in the Wayne County action. The case was assigned to Judge Irwin H. Burdick for pretrial purposes. Judge Burdick is also a Defendant in this case.

On/or about September 21, 1979, Judge Burdick ruled on Defendants' Blake's and Rabinowitz' motion for summary judgment in the Wayne County case, dismissing the malpractice and contract claims and preserving only a count for conversion. The conversion claim was later dismissed for two reasons: (1) Plaintiff was deemed to have accepted a zero dollar mediation award, by virtue of his failure to reject the Mediators' evaluation, pursuant to Wayne County Local Court Rule 403; (2) Plaintiff failed to appear for the scheduled trial date on January 20, 1982. Based on the foregoing, Judge Thomas Foley, trial judge assigned to the Wayne County case, entered an order of dismissal with prejudice against Plaintiff Veenkant (see a copy of that order, originally submitted to the district court as an attachment to Defendant Blake's supplemental brief in support of motion to dismiss, Appendix, p 41a). No appeal was ever taken from that dismissal.

Plaintiff/Petitioner's present cause of action is said to be founded on:

> " 'CIVIL RIGHTS ACT'
> 'U.S. CODE TITLE 42, Section 1983'
> 'U.S. CODE, TITLE 42, Section 1985(3)'
> 'U.S. CODE, TITLE 42, Section 1986'
> 'U.S. CODE, TITLE 42, Section 1988'
> 'CORRUPT ORGANIZATIONS ACT'
> 'TORT'
> 'MALPRACTICE' " [sic] (Plaintiff's Complaint, the list appearing next to the case caption)

Mr. Veenkant's present federal complaint rests on the identical factual basis which gave rise to the state suit except Plaintiff now wishes to characterize the matter as a civil rights action.

On/or about May 8, 1981, Defendants Blake and Farrell filed a motion for dismissal pursuant to FRCP 12(h) (3) [that Plaintiff had failed to allege a cause of action sufficient to activate the subject matter jurisdiction of the federal court] and 28 USC 1915(d) [that Plaintiff's action was filed frivolously and maliciously] (see Appendix, p 10a). By way of supplemental brief filed on/or about February 8, 1982, Defendants Blake and Farrell raised the additional argument that Mr. Veenkant was attempting to relitigate [this time as a civil rights action] the unfavorable rulings of the state court as to his tort claim (see Appendix, p 35a).

Similarly, each of the Defendants below filed motions to dismiss.

The District Court, Judge Benjamin F. Gibson presiding, brought all the motions on for hearing on May 14, 1982. All parties were heard at oral argument. The Judge's opinion and order dismissing the case in its entirety was entered on August 2, 1982 (see Appendix, p 1a, reproducing the Judge's Order and Opinion without the editorial "remarks" added by Petitioner).

Plaintiff Veenkant timely filed his Claim of Appeal with the Sixth Circuit on/or about August 6, 1982.

Although directed to file a transcript, by letter from Deputy Clerk Ruth M. Kelly dated August 16, 1982, Appellant never saw fit to do so. On/or about October 15, 1982, after filing his Brief on Appeal, Mr. Veenkant sent a letter to the parties (it is not clear if such a letter was ever filed with the court) informing that he had "filed a Complaint of fraud to the Court covering the transcript forwarded to him by the Court Reporter". Via that letter, Appellant stated that Appellees would not be given a copy of the transcript, due to "fraud".

All Defendant-Appellees filed briefs with the Sixth Circuit. Your Defendants, among others, urged that the case was an appropriate candidate for special handling because of its frivolous nature. The Sixth Circuit panel agreed that the appeal was best handled pursuant to Sixth Circuit Rule 9(d)(2), "that the appeal is frivolous and entirely without merit" so as to allow the panel to affirm without oral argument, Rule 9(a).

The Sixth Circuit panel, Judges Keith, Kennedy and Jones, found:

> "Based upon the record in this case and the briefs filed, we are convinced that this appeal is frivolous. This appeal amounts to little more than a continued abuse of process which raises no colorable legal or factual basis for the relief sought. It is totally lacking in merit, framed with no relevant supporting law, conclusory in nature and utter nonsense." Opinion, (see Appendix, p 42a)

Thus, the panel awarded double costs to Appellees pursuant to Federal Rules of Appellate Procedure 38, and 28 USC 1912. After submission of Appellees' Blake's and Farrell's taxable bill of costs, the Sixth Circuit mandate issued on May 26, 1983, taxing double costs against Mr. Veenkant in the amount of $323.72. Plaintiff/Petitioner has yet to pay these costs.

Petitioner Veenkant has filed his Petition for Writ of Certiorari as to the Blake, et al matter, apparently combining same with a Petition for Certiorari as to another lawsuit against Judge Corsiglia and certain other Defendants. Respondents Blake and Farrell have no knowledge of the details of that other lawsuit and are, therefore, unable to enlighten this Court as to what Mr. Veenkant complains of within that suit.

SUMMARY OF ARGUMENT

I. CERTIORARI SHOULD BE DENIED, ON THE AUTHORITY OF SUPREME COURT RULE 21.5, BECAUSE PETITIONER HAS FAILED TO PRESENT HIS CASE WITH ACCURACY AND CLARITY, SO AS TO PROPERLY INFORM THIS COURT, AND THE RESPONDENTS, OF THE BASIS FOR HIS PETITION.

Supreme Court Rule 21.5 provides:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Petitioner Veenkant's Petition for Writ of Certiorari is unintelligible at a number of points. His presentation of the statement of the questions, the statement of the case, and his arguments, are so confused that it is impossible for these Respondents to reply directly to points being raised.

Respondents submit that this case is suitably viewed as activating the sanction allowed under 21.5, namely: denial of Mr. Veenkant's petition.

II. CERTIORARI SHOULD BE DENIED BECAUSE THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S ACTION, AS PLAINTIFF/ PETITIONER FAILED TO ALLEGE ANY CAUSE OF ACTION SUFFICIENT TO ACTIVATE THE SUBJECT MATTER JURISDICTION OF THE FEDERAL COURT.

Plaintiff/Petitioner merely listing causes of action, including cites to federal civil rights statutes, did not confer subject matter jurisdiction upon the district court. At least this is the case where Petitioner's complaint totally failed to allege any facts which would support the view that this is a civil rights action. Similarly, the allegations of the complaint could in no way support an action under any "Corrupt Organizations Act".

As to the three Title 42 civil rights statutes involved, Petitioner's claim is fatally defective as a matter of law. This was recognized by the district court judge in his opinion granting dismissal of Plaintiff's complaint. It was affirmed by the Sixth Circuit panel.

Case law is clear that violations of 42 USC 1983 do not occur in the absence of action "under color of" state law which deprives a plaintiff of a right, privilege or immunity secured by the constitution or other federal law. *Paul* v *Davis*, 424 US 693; 96 S Ct 1155 (1976); *Studen* v *Beebe*, 588 F2d 560 (6th Cir. 1978). Petitioner's complaint alleged no violation of civil rights at the hands of state officials. The facts do not support such an allegation. It is clear, therefore, that Defendant/Respondents Maurice N. Blake and Clayton F. Farrell could not have acted under color of law in any joint activity with state officials which might subject them to §1983 liability.

Case law has frequently held that private attorneys cannot act under color of state law within the meaning of 42

USC 1983, Meiselman, Attorney Malpractice: Law & Procedure, §16.2:

> "The courts have consistently rejected this theory that the lawyer acts under color of law."

In *Fletcher* v *Hook*, 446 F2d 14 (3rd Cir, 1971), the Court summarized:

> "We have consistently held that such a tort claim against a professional man [an attorney] for malpractice is not cognizable under the Civil Rights Act." 16

See also, *Briley* v *State of California*, 564 F2d 849 (9th Cir, 1977); *Tunheim* v *Bowman*, 336 F Supp 1395, 1396 (Nev, 1973).

Even so, complaints claiming 1983 conspiracies are subject to dismissal where a plaintiff fails to plead facts sufficient to support existence of a civil rights conspiracy, *Car-Two* v *City of Dayton*, 357 F2d 921, 922 (6th Cir, 1966); *Place* v *Shepherd*, 446 F2d 1239, 1244 (6th Cir, 1971); *Copley* v *Sweet*, 133 F Supp 502, 504 (WD Mich, 1955), *aff'd* 234 F2d 660 (6th Cir, 1956); *Family Forum* v *Archdiocese of Detroit*, 347 F Supp 1167, 1172 (ED Mich, 1972). Petitioner Veenkant has completely failed to allege any *facts*, as opposed to mere conclusions, which could support a conspiracy count.

Further, Petitioner did not state a cause of action under 42 USC 1985(3) because he did not allege any racial or otherwise class based invidiously discriminatory animus sufficient to support such a claim, *Griffin* v *Breckenridge*, 403 US 88, 102-103; 91 S Ct 1970 (1971). See *Slavin* v *Curry*, 574 F2d 1256 (5th Cir, 1978), *modified* 583 F2d 779 (1978) on other grounds, where plaintiff claimed his own attorney was involved in a §1985 conspiracy designed to keep him from securing a beer and wine license for his store. The court upheld dismissal of the claim, as the requisite racial or class based discrimination was absent. For similar hold-

ings, see *Blevins* v *Ford*, 572 F2d 1336 (9th Cir, 1978); *Atkins* v *Lanning*, 556 F2d 485 (10th Cir, 1977).

Since Plaintiff/Petitioner failed to state a proper 42 USC 1985 claim, he was necessarily unable to state a claim under 42 USC 1986. By the clear terms of the statute, §1986 may not be activated unless plaintiff has stated a 1985 claim. No defendant may be held to have failed to protect a plaintiff from a §1985 conspiracy unless, in fact, such a conspiracy existed, *Dowsey* v *Wilkins*, 467 F2d 1022, 1026 (5th Cir, 1972); *Taylor* v *Nichols*, 558 F2d 561, 568 (10th Cir, 1977); *Dacey* v *Dorsey*, 568 F2d 275, 277 (2d Cir, 1978); 15 Am Jur2d, Civil Rights, §26.

42 USC 1988 does not purport to set forth a cause of action, but merely directs federal courts as to what law to apply in causes of action arising under Federal Civil Rights Acts, *Moor* v *County of Alamada*, 411 US 693; 93 S Ct 1785, petition for rehearing denied 412 US 963; 93 S Ct 2999 (1973); Antieau, Federal Civil Rights Acts, §258.

The district court judge aptly summarized the gist of all Mr. Veenkant's complaints:

> "Plaintiff lacks a real understanding of procedural court rules and certain accepted practices and he does not like losing."

This is not the "stuff" of which civil rights claims are made.

The instant lawsuit is a product of Petitioner's unhappiness over the progress of his state court suit against Messrs. Blake and Rabinowitz. With the expiration of the appeal period in the Wayne County action, the factual basis of this lawsuit was litigated to final conclusion in Defendant/Respondents' favor. Petitioner's federal suit is grounded on the same loss and/or conversion of a "Motion for New Trial" document which Mr. Veenkant believes once existed in the records of the Allegan County Circuit Court, a copy of which he believes he once turned over to

Respondent Blake. Any claim which might have arisen out of the alleged disappearance of that document has now been disposed of by the decision of Judge Foley in the Wayne County state court action.

Under the most basic principles of *res judicata* and collateral estoppel, which have consistently been adhered to in civil rights actions [see e.g. *Preiser* v *Rodriquez*, 411 US 475; 93 S Ct 1827 (1973); *Coogan* v *Cincinnati Bar Association*, 431 F2d 1209, 1211 (6th Cir, 1979)], petitioner was not to be allowed to relitigate his claim that the supposedly "converted" document is supportive of a cause of action. Petitioner was attempting to invoke federal jurisdiction as a substitute for appeal within the state court system—a strategy which cannot be countenanced by the federal courts (see district court opinion, Appendix, p 8a). Remaining unconvinced of his case's utter lack of merit, Mr. Veenkant appealed the district court opinion, with the result that the parties continued to be embroiled in a lawsuit which is entirely ill-conceived, both factually and legally.

In affirming the district court opinion, the Sixth Circuit Court of Appeals observed that Mr. Veenkant's case was "totally lacking in merit, framed with no relevant supporting law, conclusory in nature, and utter nonsense". Undaunted, Mr. Veenkant now seeks a writ of certiorari in this Honorable Court. There is no cause of action here. The piece of paper Petitioner claims was lost and/or converted never existed in the first place. Petitioner's quest for the nonexistent piece of paper has already consumed countless hours of judicial time. It has required the parties to incur thousands of dollars in attorneys' fees. It is clear that Petitioner has not presented a cognizable civil rights claim—or any other type of claim, for that matter. The petition for writ of certiorari should be denied.

III. DOUBLE COSTS, PRINTING EXPENSES, AND REASONABLE ATTORNEYS' FEES SHOULD BE AWARDED RESPONDENTS BECAUSE THE PETITION FOR WRIT OF CERTIORARI IS COMPLETELY FRIVOLOUS, SUPREME COURT RULES 49.2 AND 50.7.

Supreme Court Rule 49.2 provides for the award of damages:

> "When an appeal or a petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages."

Supreme Court Rule 50.7 amplifies the above, providing that as to costs:

> "In an appropriate case, the Court may adjudge double costs."

Respondents submit that the completely frivolous nature of Mr. Veekant's petition is readily apparent. The Sixth Circuit panel, in what is surely a rare move, after receiving full briefs from all parties, agreed that the appeal was utterly frivolous and imposed the "double costs" sanction. This Court should follow suit in imposing sanctions. The award of double costs, as well as appropriate damages under 49.2, will at least partially compensate Respondents for the financial burden imposed by defense of this latest effort of Mr. Veenkant's.

Respondents seek "appropriate damages", including reasonable attorneys' fees incurred in preparing their opposition to Mr. Veenkant's petition, as well as payment of the expenses of printing this opposition brief and its appendix.

CONCLUSION

Respondents Maurice N. Blake and Clayton F. Farrell respectfully request that this Honorable Court deny Petitioner Boyd Veenkant's petition for writ of certiorari.

Further, Respondents seeks entry of an order imposing double costs and awarding appropriate damages, including payment of reasonable attorneys' fees and printing expenses, under Supreme Court Rule 49.2 and 50.7, because of the frivolous nature of Mr. Veenkant's petition.

Respectfully submitted,
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Dated: August 12, 1983

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOYD VEENKANT,
Plaintiff,

v. File No. K81-62 CA

ROBERT GURN, et al.,
Defendants.

BOYD VEENKANT,
Plaintiff,

v. File No. K81-101 CA

JUDGE IRWIN H. BURDICK, et al.,
Defendants.

BOYD AND JESSIE VEENKANT,
Plaintiffs,

v. File No. K81-145 CA

ROBERT WESLER, et al.,

OPINION

These three cases filed by plaintiff, pro se, involve numerous claims that defendants have violated his civil rights. In addition he seeks redress for violations of state law and his self-styled "Bill of Rights Covering this Court Case." Jurisdiction is presumably based upon 28 U.S.C. § 1343; the substantive basis for each case being some combination of 42 U.S.C. §§ 1983, 1985 and/or 1986. After hearing motions to dismiss or for summary judgment filed by virtually all of the defendants, the Court has, *sua sponte*, consolidated these matters solely for the purpose of this opinion. Prior to a discussion of the legal issues, a review of the salient facts of each case is in order.

VEENKANT v. GURN, et al.

This case (hereinafter "No. 62") originated with a traffic ticket issued to plaintiff by defendant Officer Gurn in September, 1978. The violation was failure to stop at a sign. Plaintiff was convicted after a jury trial and then pursued an appeal. Defendant Judge Beach presided at the trial, defendant Judge Corsiglia was assigned to the appeal and defendants Liming and Antkoviak were the prosecutors. Prior to the decision on appeal, the prosecutor indicated his willingness to remand for a new trial due to some malfunction of the recording equipment which resulted in deletion of some portions of the trial transcript. Apparently believing that the prosecutor's offer to remand constituted some form of bribery, plaintiff refused to sign the stipulation. Plaintiff's ultimate inability to demonstrate prejudice from the deletion and lack of any other error resulted in affirmance of his conviction. Steadfastly contending that he did, in fact, stop at the sign plaintiff filed this action for damages. In addition to alleged violations of § 1983 and § 1986, the case sounds in "tort" and malicious prosecution.

VEENKANT v. BURDICK, et al.

Plaintiff's second action (hereinafter "No. 101") has a long history. In 1970 a jury decided against him in a personal injury action. His motion for a new trial was denied. Although he allegedly gave his attorney money to purchase the transcript, it was never ordered and his appeal was dismissed for failure to file it. Several years later plaintiff retained defendant Attorneys Blake and Rabinovitz for purposes of pursing a delayed appeal and for proceeding against his trial attorney for unethical conduct. Subsequently, these attorneys returned a portion of plaintiff's retainer and indicated lack of interest in pursuing the case. At this point, the facts most salient to No. 101 begin.

Plaintiff commenced an action against Attorneys Blake and Rabinovitz in Wayne County Circuit Court for malprac-

tice, breach of contract and conversion. The conversion claim apparently arises from plaintiff's steadfast belief that the *defense* attorney in his personal injury case made a motion for new trial entitled "Motion for Trail (sic) Aggravation rather than a re-injury to a part of the body that was previously injured slightly without any serious consequence to the plaintiff."[1] Plaintiff contends that a handwritten copy of this motion was in the file given to his attorneys but never returned. The case was assigned to defendant Judge Burdick; defendant Attorney Farrell represented Blake, defendant Attorney Franco represented Rabinovitz.

Judge Burdick dismissed the malpractice and contract claims, leaving only the one for conversion. That claim, however, was later dismissed for two reasons. Firstly, plaintiff had failed to expressly reject the mediators' decision[2] to deny his claim. Secondly, he had failed to appear for the scheduled trial.[3] Prior to dismissal, No. 101 was filed against the Wayne County defendants, their attorneys, the presiding judge and Judge Corsiglia. The allegations against the latter are not entirely clear. It appears, however, that Judge Corsiglia was allegedly informed about the removal of the new trial motion but did not take any action to investigate or report it. Plaintiff seeks damages for violations of § 1983, § 1985, § 1986, "tort," malpractice and the "Corrupt Organizations Act."

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[1] While the Court need not decide whether this motion ever existed, it does note that its title is virtually identical to paragraph four of plaintiff's trial attorney's motion for new trial. The Allegan County records indicate that no such motion was ever filed by the defense attorney. Plaintiff contends, however, that the motion was removed from the court file.

[2] Wayne County Local Court Rule 403 provides for pretrial mediation of cases. A mediation Panel makes a recommendation of disposition which must be expressly rejected within 40 days or it is deemed accepted.

[3] Through some apparent oversight, plaintiff's case was scheduled for trial despite his failure to timely reject the mediators' recommendation.

VEENKANT v. WESLER, et al.

In 1978 plaintiff and his wife purchased an automobile from Stoney Ford, a dealership which is now defunct. The vehicle was allegedly damaged and had not been undercoated as agreed. Upon discovering these breaches, plaintiff sued the individual officers of Stoney Ford, defendants Robert, Roland and Susan Wesler and George Dombrowski[4] and their sales manager, defendant Charles Marlow. After a hearing, the presiding judge, defendant Buhl, ordered certain action to remedy defects in the pleadings. Plaintiff complied by adding Stoney Ford as a defendant, but he still failed to state a claim against the individual officers. Therefore, Judge Buhl dismissed the action as to those individuals.

At the pretrial conference, plaintiff announced that he was disqualifying Judge Buhl. The precipitating event involved the judge's request for payment of the jury fee. Subsequently, the entire case was dismissed for failure to prosecute. This action (No. 145) was initiated against all the state court defendants and Judge Buhl. Plaintiff seeks damages for alleged violations of §§ 1983, 1985, 1986 "tort" and breach of contract.

For the reasons which follow, this Court is of the opinion that these three actions should be dismissed. Examining only the Complaints it is clear that plaintiff has failed to state a claim against most of the defendants. Fed. R. Civ. P. 12(b)(6). *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508 (1972). As to other defendants and claims; there is no genuine issue of material fact; summary judgment is therefore appropriate. Fed. R. Civ. P. 56. *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144 (1970);

[4] There is a factual dispute as to wheter Dombrowski was an officer which the Court need not address. It should, however, be noted that Dombrowski has died since commencement of this action. There has been no action to substitute a defendant for him. Fed. R. Civ. P. 25(a).

United States v. *Articles of Device . . . Diapulse*, 527 F.2d 1008 (6th Cir. 1976).

It is well-established that judges are absolutely immune from liability for their judicial acts. *Stump* v. *Sparkman*, 435 U.S. 349 (1978). The Complaints in all three cases indicate that Judges Beach, Buhl, Burdick and Corsiglia (in No. 62) are being sued solely for adverse decisions rendered in plaintiff's state court cases. This represents a classic example of the type of situation which gave rise to principles of immunity. Plaintiff's remedy for any erroneous judicial decision is to appeal. Accordingly, the claims against these judges are dismissed.

Whether immunity also absolves Judge Corsiglia in No. 101 is less clear, but a brief analysis demonstrates applicability of the principle. Although Judge Corsiglia was not yet on the Allegan Circuit Court bench at the time the elusive motion allegedly disappeared, it is clear that he was later approached in that capacity. Apparently he exercised judicial discretion in deciding not to pursue the matter. Accordingly, he is also immune from this damage action and must be dismissed. *Stump* v. *Sparkman*, 435 U.S. 349 (1978).

In *Imbler* v. *Pachtman*, 424 U.S. 409 (1976) the Supreme Court declared that state prosecutors were also entitled to absolute immunity from damages for activities intimately related to the judicial process. *Cf. Bushouse* v. *County of Kalamazoo*, ___ F. Supp. ___ (No. K80-380, W.D. Mich. 4/12/82) (question of fact existed as to whether prosecutor was acting as advocate or investigator.) In No. 62 plaintiff alleges nothing more than that Prosecutors Liming and Antkoviak performed certain acts in their capacities as advocates which were intimately related to plaintiff's traffic prosecution. Accordingly, they are entitled to immunity and all claims against them are dismissed.

Each of these actions involves either a claim of conspiracy under 42 U.S.C. § 1985 and/or of misprison under 42

U.S C. § 1986. In order to state a § 1985 conspiracy claim, plaintiff must plead a class based discrimination. *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971); *Ohio Inns* v. *Nye*, 542 F.2d 673 (6th Cir. 1976), *cert. denied* 430 U.S. 946 (1977). The classes protected are those discrete and insular minorities which have traditionally been entitled to special protection, *Browder* v. *Tipton*, 630 F.2d 1149 (6th Cir. 1980). Further protection has been extended to groups formed on the basis of political beliefs or associations. *Kimble* v. *D. J. McDuffy, Inc.*, 648 F.2d 340 (6th Cir. 1981). If there is no basis for a § 1985 claim, there can also be no liability under § 1986. *Williams* v. *St. Joseph Hospital*, 629 F.2d 448 (7th Cir. 1980).

In no sense do any of these Complaints suggest that plaintiff is a member of some protected class. Accordingly, all § 1985 and § 1986 claims must be dismissed.

At this point, the Court is left with claims under 42 U.S.C. § 1983 and others involving state common law remedies. For purposes of this opinion, the Court assumes that it is being asked to accept pendent jurisdiction over the state law claims since there is no other basis for their being entertained here. An analysis of jurisdiction under 28 U.S.C. § 1343 (§ 1983 being the underlying basis) must precede any action taken with respect to the common law claims. *Ohio Inns* v. *Nye*, 542 F.2d 673 (6th Cir. 1976) (Appendix Opinion of district judge at p. 677), *cert. denied* 430 U.S. 946 (1977).

In order to state a valid claim under § 1983, plaintiff must allege that he has been deprived of a right, privilege or immunity secured by the Constitution or other federal law and that the deprivation was commited under color of state law. *Paul* v. *Davis*, 424 U.S. 693 (1976); *Studen* v. *Beebe*, 588 F.2d 560 (6th Cir. 1978). It is not enough to allege only a legal interest which does not rise to the level of a federal guarantee, *Paul* v. *Davis*, 424 U.S. 693 (1976); *Sullivan* v.

Brown, 544 F.2d 279 (6th Cir. 1976). Similarly, involvement of a state official alone is not sufficient. *Baker* v. *McCollan*, 443 U.S. 137 (1979); *Studen* v. *Beebe*, 588 F.2d 560 (6th Cir. 1978).

When viewed from this perspective, it is often difficult to determine the basis of plaintiff's § 1983 claims. Two things are, however, patently clear: Plaintiff lacks a real understanding of procedural court rules and certain accepted practices[5] and he does not like losing. He repeatedly points to the underlying common law claims against the state court defendants and seems to allege that he was denied due process in pursuing those claims. For example, in No. 145, plaintiff complains that there was no service of process on one of the state court defendants. In fact, that defendant had voluntarily submitted to that court's jurisdiction thereby eliminating the requirement of service. Without detailing each similar claim, the Court turns to the question of whether Michigan law provided plaintiff with redress for his various grievances. *Parratt* v. *Taylor*, 451 U.S. 527 (1981).

The State of Michigan permits an injured person to recover damages for breach of contract, legal malpractice and various other torts which may have been applicable to plaintiff's claims against the state court defendants. The mere filing of a lawsuit, however, does not guarantee success. Certain procedural and substantive rules must be satisfied along the way. Should a presiding judge err in any ruling, there is an absolute right to appeal to one higher court. Further appeal may be granted.

After a complete review of the voluminous filings in No. 101 and No. 145 this Court is convinced that plaintiff is

[5] This is evidenced by plaintiff's complaints regarding the prosecutor's conference with Officer Gurn prior to the traffic trial and Judge Burdick's alleged request that Attorneys Farrell and Franco prepare an order granting their motion for summary judgment.

merely attempting appeal of adverse decisions. It has long been the rule in this Circuit that § 1983 is not designed as a device to relitigate issues or to challenge an unfavorable state court decision. *Coogan* v. *Cincinnati Bar Assn.* 431 F.2d 1209 (6th Cir. 1970); *Tonti* v. *Petropoulous*, 656 F.2d 212 (6th Cir. 1981). Plaintiff cannot credibly argue a violation of due process when he has not even pursued a right to appeal which the state grants. *See Parratt* v. *Taylor*, 451 U.S. 527 (1981).

Case No. 62 appears to have a slightly different footing. There was, at least, an initial appeal from the jury's conviction. Plaintiff now seeks to hold Officer Gurn liable under § 1983 for malicious prosecution based partially on a contention that he lied about plaintiff's not having stopped for the sign. This action, however, presents a collateral estoppel problem which cannot be surmounted even if a sufficient deprivation could be shown. Plaintiff had a full and fair opportunity to litigate his traffic citation. By inference, it is clear that the jury must have believed Officer Gurn's testimony rather than plaintiff's. Since this issue was necessarily decided against plaintiff, he cannot relitigate it here. *Allen* v. *McCurry*, 449 U.S. 90 (1980); *Mulligan* v. *Schlachter*, 389 F.2d 231 (6th Cir. 1968).

Accordingly, the myriad of § 1983 claims in all cases must be dismissed. Having found no basis for federal jurisdiction, the Court declines to entertain any of the state law claims which may be pled. *Gibbs* v. *United Mine Workers*, 383 U.S. 715 (1966).

(s) BENJAMIN F. GIBSON
United States District Judge

Dated: August 2, 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOYD VEENKANT,
Plaintiff,

v. File No. K81-101 CA

JUDGE IRWIN H. BURDICK, et al.,
Defendants.

ORDER

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this 2nd day of August, 1982.

PRESENT: Honorable Benjamin F. Gibson,
District Judge

In accordance with the attached Opinion dated August 2, 1982, IT IS HEREBY ORDERED that the above-entitled case is dismissed in its entirety.

IT IS SO ORDERED.

(s) BENJAMIN F. GIBSON
United States District Judge

I hereby certify that the foregoing is a true copy of the original on file in this cause

By (s) M. Ferriera

Date Aug. 3, 1982

U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOYD VEENKANT,
Plaintiff,

vs. No. K 81 101 CA 4

JUDGE IRWIN H. BURDICK;
JUDGE GEORGE R. CORSIGLIA;
MAURICE N. BLAKE; STEVEN
RABINOVITZ; CLAYTON F.
FARRELL; and JOHN CESARE
FRANCO,
Defendants.

BOYD VEENKANT
In Pro Per

NOREEN L. SLANK (P 31964)
Attorney for Blake & Farrell

MOTION FOR DISMISSAL

NOW COME defendants MAURICE N. BLAKE and CLAYTON F. FARRELL, by and through their attorneys COLLINS, EINHORN & FARRELL, P.C., and state for their Motion for Dismissal, pursuant to FRCP 12(h) (3) and 28 USC §1915(d), as follows:

1. That the underlying basis for plaintiff's present Complaint stems from a 1968 car accident which gave rise to a lawsuit tried in Allegan County Circuit Court in 1970, entitled *Boyd Veenkant* v *Charles F. Armitage*, #2-1225.

2. That the 1970 litigation was concluded when the Jury returned its verdict against plaintiff, Boyd Veenkant.

3. That plaintiff's own attorney, Alphonse Lewis, Jr., filed a Motion for New Trial [see attached Exhibit "1"], which was denied by the Circuit Court.

4. That Charles E. Starbuck, attorney for defendant Charles F. Armitage, would not, and did not, [see copy of Charles E. Starbuck's Affidavit attached as Exhibit "2"] request a new Trial after having won the case for his client by securing a verdict of "no cause for action".

5. That on or about July 23, 1979, plaintiff, Boyd Veenkant, filed a Complaint against attorneys Maurice N. Blake and Steven Rabinovitz in the Wayne County Circuit Court, which purported to state a claim for attorney malpractice and breach of contract, *Boyd Veenkant* v *Maurice N. Blake and Steven Rabinovitz*, #79-924-505-CZ, [see a copy of plaintiff's Complaint, attached as Exhibit "3"]. This Complaint arose out of attorney Maurice N. Blake's agreement to determine whether he would represent plaintiff, Boyd Veenkant, in appellate proceedings with respect to the 1970 Allegan County litigation.

6. That on or about August 14, 1979, attorney Clayton F. Farrell, one of the defendants herein, filed an Appearance on behalf of Maurice N. Blake in the Wayne County Circuit Court action. [See attached Exhibit "4".]

7. That on or about September 21, 1979, the Honorable Irwin H. Burdick, also a named defendant herein, ruled on defendant Maurice N. Blake's Motion for Accelerated Judgment as argued to the Court by attorney Clayton F. Farrell. Judge Burdick granted Judgment in defendant Maurice N. Blake's favor on all claims of legal malpractice, preserving plaintiff's cause of action only as to a conversion claim. [See attached Exhibit "5".]

8. That on or about November 14, 1979, the Honorable Irwin H. Burdick ordered plaintiff to file a list of the missing documents covered by the remaining conversion claim. [See attached Exhibit "6".]

9. That plaintiff did file said list of missing documents on or about January 3, 1980. [See attached Exhibit "7".]

Said list stated that only one document was missing—that being a "Motion for Trail Aggravation Rather Then a Re-Injury to a Part of the Body That Was Previously Injured Slightly Without Any Serious Consequence to Plaintiff" [sic] purportedly filed by attorney Charles E. Starbuck, attorney for the defendant in the original auto negligence case in Allegan County.

10. That the only Motion for New Trial filed in the case was filed by plaintiff Boyd Veenkant's own attorney (see copy of that Motion attached as Exhibit "1") which contains the following language at Paragraph 4:

> "4. That the Court erred in ruling that the injury sustained by the plaintiff was an aggravation rather than a reinjury to a part of the body that was previously injured slightly without any serious consequence to plaintiff."

11. That a comparison of this language with that used in the list of missing documents supplied by the plaintiff in the Wayne County Circuit Court action shows that this Motion by attorney Alphonse Lewis, Jr. is, in fact, the document which the plaintiff claims to have been "converted" [see Paragraph 27 of plaintiff's present Complaint] by defendants Maurice N. Blake and Steven Rabinovitz and/or "removed" [see Paragraphs 53 and 54 of plaintiff's present Complaint] by the "agent" of the Honorable George R. Corsiglia of the Allegan County Circuit Court, also a defendant herein.

12. That plaintiff has been supplied with a copy of attorney Alphonse Lewis, Jr.'s Motion for New Trial and it is clear that plaintiff has simply mistaken as to there ever having been a Motion for New Trial filed by defense attorney Charles E. Starbuck.

13. That defendants Maurice N. Blake and Steven Rabinovitz, by their attorneys Clayton F. Farrell and John Cesare Franco respectively, filed Motions for Summary

Judgment on the conversion count which were argued before Judge Burdick on April 24, 1981.

14. That these Motions for Summary Judgment were denied on April 24, 1981, solely on the grounds that Mr. Veenkant, proceeding in pro per, did not understand the proceedings.

15. That on or about April 23, 1981, plaintiff filed this present civil action in the U.S. District Court for the Western District of Michigan, Southern Division.

16. That except for the fact that plaintiff is now apparently attempting to raise Federal statutory causes of action and has sued the attorneys representing defendants Maurice N. Blake and Steven Rabinovitz as well as two Circuit Court Judges, plaintiff's present Complaint rests on the identical factual basis currently being litigated in the Wayne County Circuit Court.

17. That defendants' Motion for Dismissal should be granted, pursuant to 28 USC §1915(d), as plaintiff's action is both frivolous and malicious. [See attached Brief.]

18. That defendants' Motion for Dismissal should be granted, pursuant to FRCP 12(h)(3), since he has not alleged any statutory cause of action sufficient to activate the subject matter jurisdiction of this Court. [See attached Brief.]

WHEREFORE, defendants MAURICE N. BLAKE and CLAYTON F. FARRELL respectfully request that this Honorable Court grant their Motion for Dismissal.

COLLINS, EINHORN & FARRELL, P.C.
Noreen L. Slank (P 31964)
Attorney for defendants Blake and Farrell, only
4000 Town Center, Suite 909
Southfield, Michigan 48075
355-4141

Dated: May 8, 1981.

U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOYD VEENKANT,
Plaintiff,

vs. No. K 81 101 CA 4

JUDGE IRWIN H. BURDICK; JUDGE GEORGE R. CORSIGLIA; MAURICE N. BLAKE; STEVEN RABINOVITZ; CLAYTON F. FARRELL; and JOHN CESARE FRANCO,
Defendants.

BOYD VEENKANT
In Pro Per

NOREEN L. SLANK (P 31964)
Attorney for Blake & Farrell, only

BRIEF IN SUPPORT OF
MOTION FOR DISMISSAL

ARGUMENT I: PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO 28 USC §1915(d), AS THE CAUSE OF ACTION IS FRIVOLOUS AND/OR HAS BEEN FILED MALICIOUSLY.

The subject matter of plaintiff's Complaint is presently being litigated in the Wayne County Circuit Court. In September of 1979, Judge Irwin H. Burdick granted Accelerated Judgment against plaintiff as to all claims of legal malpractice (while preserving plaintiff's conversion claim). In March of 1981, after deposing plaintiff, Boyd Veenkant, both defendants Maurice N. Blake and Steven Rabinovitz filed additional Motions for Summary Judgment on the conversion count. It became clear that plaintiff's conversion claim was only that one handwritten copy of a Motion

for New Trial allegedly filed by defense attorney Charles E. Starbuck had not been returned to plaintiff. It also became clear that plaintiff was simply mistaken as to what Motions had ever been filed in the 1970 litigation.

Some time after receipt of the defendants' Motions for Summary Judgment on the conversion count in the Wayne County case (as the Motions are referred to in plaintiff's Complaint at Paragraphs 45 and 54), plaintiff elected to file this present lawsuit in Federal Court.

28 USC §1915(d) provides authority for this Court to dismiss a case where a Plaintiff, proceeding in forma pauperis, has filed an action which is frivolous or malicious. 28 USC §1916(d) provides in pertinent part:

> "The Court . . . may dismiss the case . . . if satisfied that the action is frivolous or malicious."

This present Complaint is frivolous in that it is founded on the totally erroneous—though stubbornly held—belief on plaintiff's part, that the opposing defense attorney in plaintiff's 1970 lawsuit would have filed for a new Trial although defendant had won a "no cause" verdict. There is simply no basis, either in fact or in law, for plaintiff's belief. Defendant Maurice N. Blake cannot have "converted" a client's document when that document never existed in the first place, and for that reason the plaintiff's action is frivolous and should be dismissed.

The entire Complaint against attorney Clayton F. Farrell is contained at Paragraphs 27 and 55 of plaintiff's Complaint. The gist of plaintiff's Complaint against attorney Clayton F. Farrell is that Mr. Farrell received "notice" of the fact that defendants Maurice N. Blake and Steven Rabinovitz had "converted" the Motion for New Trial and/or that the Motion had been "removed" from the Allegan County Court file, and that defendant Clayton F. Farrell did not contact the authorities "to take action".

No document has been converted by any defendant or removed from the Court file. Even so, defendant Clayton F. Farrell was at all times acting in his capacity as defendant Maurice N. Blake's attorney. Mr. Farrell had no duty to accept plaintiff, Boyd Veenkant's, inaccurate version of the facts or set about reporting the theft of a document which, in fact, had never existed.

The only other possible complaint against defendant Clayton F. Farrell is raised at Paragraph 46 of plaintiff's Complaint. There plaintiff makes reference to "fraud" as to the filing of defendant Maurice N. Blake's Motion for Summary Judgment, apparently in that plaintiff believed the Wayne County Court number was referred to inaccurately. Paragraph 2 of defendant's Motion clearly identified the Allegan County Court file number not the Wayne County docket number. There is no fraud involved here, only plaintiff's misunderstanding of the proceedings.

The claim against defendant Clayton F. Farrell should properly be dismissed as it is totally frivolous, lacking any legal or factual merit whatsoever.

Further, claims against defendants Maurice N. Blake and Clayton F. Farrell should be dismissed as this Complaint has been filed with what must be characterized as malicious intent. Apparently in response to his lack of success in pursuing the Wayne County Circuit Court action, the plaintiff's "next" step was to sue the Circuit Court Judge assigned to handle his case, as well as counsel for both of the defendants. As to defendant Maurice N. Blake, facing a second lawsuit, now in Federal Court, involving this same set of facts can only amount to harrassment. Defendants request that this Court see through plaintiff's blatant effort to intimidate the lawful administration of justice, and that this Court dismiss plaintiff's Complaint as to defendants Maurice N. Blake and Clayton F. Farrell.

ARGUMENT II: PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO FRCP 12(h)(3), AS PLAINTIFF HAS FAILED TO ALLEGE ANY CAUSE OF ACTION SUFFICIENT TO ACTIVATE THE SUBJECT MATTER JURISDICTION OF THIS COURT.

Nowhere in plaintiff's 32 page Complaint does he allege facts fitting into any statutory framework that would allow this Court to assume subject matter jurisdiction.

At page 1 of plaintiff's Complaint, the following list appears next to the case caption, without any explanation or elaboration:

" 'Civil Rights Act'
'U.S. Code Title 42, Section 1983'
'U.S. Code, Title 42, Section 1985(3)'
'U.S. Code, Title 42, Section 1986'
'U.S. Code, Title 42, Section 1988'
'Corrupt Organizations Act'
'Tort'
'Malpractice' " [sic]

Plaintiff's merely listing such causes of action, and including cites to Federal Civil Rights Statutes, does not confer subject matter jurisdiction upon this Court. At least this is the case where plaintiff's Complaint totally fails to allege any facts which would support the view that this is a civil rights action. Similarly, the allegations of plaintiff could in no way support an action under any "corrupt organizations act".

As to the three Title 42 Civil Rights Statutes involved, plaintiff's claim is fatally defective as a matter of law.

Case law is clear that violations of 42 USC §1983 do not occur in the absence of action "under color of" State law. The present Complaint alleges no violation of plaintiff's

civil rights at the hands of State officials. The facts do not support such an allegation. It is clear, therefore, that defendants Maurice N. Blake and Clayton F. Farrell could not have acted under color of law in any joint activity with State officials which might subject them to §1983 liability.

In any event, case law has frequently held that private attorneys cannot act under color of State law within the meaning of 42 USC §1983, Meiselman, *Attorney Malpractice: Law & Procedure* §16.2:

> "The Courts have consistently rejected the theory that the lawyer acts under color of law."

In *Fletcher* v *Hook* 446 Fed 2d 859 (CA 5, 1974), the Court summarized at page 16:

> "We have consistently held that such a tort claim against a professional man [an attorney] for malpractice is not cognizable under the Civil Rights Act."

See also *Briley* v *State of California* 564 Fed 2d 849, 858 (CA 9, 1977); *Tunheim* v *Bowman* 366 Fed Supp 1395, 1396 (Nev 1973).

Further, plaintiff has not stated a cause of action under 42 USC §1985(3) since he has not alleged any racial or otherwise class-based invidiously discriminatory animus sufficient to support such a claim. *Griffin* v *Breckenridge* 403 US 88, 102-103; 91 Sup Ct 1790 (1971). See *Slavin* v *Curry* 574 Fed 2d 1256 (CA 5, 1978) modified 583 F 2d 779 on other grounds, where plaintiff claimed his own attorney was involved in a §1985 conspiracy designed to keep him from securing a beer and wine license for his store. The Court upheld dismissal of the claim, as the requisite racial or class-based discrimination was absent. For similar holdings, see *Blevins* v *Ford* 572 Fed 2d 1336 (CA 9, 1978); *Atkins* v *Lanning* 566 Fed 2d 485 (CA 10, 1977), especially at page 489.

Since plaintiff has failed to state a proper 42 USC §1985 claim, he will necessarily be unable to state a claim under 42 USC §1986. By the clear terms of the statute, §1986 may not be activated unless plaintiff has stated a §1985 claim. No defendant may be held to have failed to protect plaintiff from a §1985 conspiracy unless, in fact, such a conspiracy existed. *Dowsey* v *Wilkins* 467 Fed 2d 1022, 1026 (CA 5, 1972); *Taylor* v *Nichols* 558 Fed 2d 561, 568 (CA 10, 1977); *Dacey* v *Dorsey* 568 Fed 2d 275, 277 (CA 2, 1978); 15 Am Jur 2d "Civil Rights" §26.

42 USC §1988 does not purport to set forth a cause of action, but merely directs Federal Courts as to what law to apply in causes of action arising under Federal Civil Rights Acts. *Moor* v *County of Alamada* 411 US 693, 93 Sup Ct 2999 (1973), summarized at Antieau, *Federal Civil Rights Acts*, §258.

FRCP 12(h)(3) provides:

> "Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action."

As plaintiff has no claim cognizable under Federal statutes, and there is no diversity jurisdiction, this Court lacks subject matter jurisdiction and defendants' Motion to Dismiss should properly be granted.

Respectfully submitted,

COLLINS, EINHORN & FARRELL, P.C.
Noreen L. Slank (P 31964)
Attorney for defendants Blake and Farrell, only
4000 Town Center, Suite 909
Southfield, Michigan 48075
355-4141

Dated: May 8, 1981.

Motion for New Trial

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF ALLEGAN

BOYD VEENKANT,
Plaintiff.

vs. File No. 2/1225

CHARLES F. ARMITAGE,
Defendant.

MOTION FOR NEW TRIAL

NOW COMES the plaintiff, Boyd Veenkant, by his attorney Alphonse Lewis, Jr., and moves this Court for a new trial on the following grounds, to wit:

1. That the Verdict of the Jury is contrary to the great weight and preponderence of the evidence;

2. That the Court erred in ruling the damages to the Jeep out of consideration of the Jury;

3. That the Court erred in ruling that the plaintiff is not entitled to future damages;

4. That the Court erred in ruling that the injury sustained by plaintiff was an aggravation rather than a re-injury to a part of the body that was previously injured slightly without any serious consequences to plaintiff;

5. That the Court erred in many rulings on the evidence and admissibility of exhibits;

6. That the Court erred in its instructions to the Jury;

7. That the Court erred in its rulings relating to admissibility and effect of medical testimony.

This motion is based upon the files and records in this cause and upon the testimony taken at the trial hereof.

Alphonse Lewis, Jr.
Attorney for Plaintiff

NOTICE OF MOTION

TO: MR. CHARLES E. STARBUCK
Attorney for Defendant
815 American National Bank Building
Kalamazoo, Michigan 49006

PLEASE TAKE NOTICE that the above motion will be brought on for hearing before the Court, at the Courthouse, in Allegan, Michigan, on Monday, September 21, 1970, at 1:30 PM. in the afternoon, or as soon thereafter as counsel may be heard.

Alphonse Lewis, Jr.
Business Address:
510 McKay Tower
Grand Rapids, Michigan

DATED: August 28, 1970

Docket Entries–Circuit Court

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF ALLEGAN

BOYD VEENKANT,
Plaintiff,

vs. File No. 66 2/1225 NI

CHARLES F. ARMITAGE,
Defendant.

DOCKET ENTIRES

DATE	PROCEEDINGS
1966	
Jan. 21,	Complaint—Automobile Negligence filed.
Jan. 21,	Summons issued.
Jan. 24,	Summons returned with Affidavit of Service.
Feb. 4,	Appearance filed.
Mar. 3,	Answer filed.
1967	
May 26,	Demand for Trial by Jury filed.
June 1,	Motion to Quash Jury Demand filed.
1968	
Mar. 6,	Motion to Withdraw as Attorneys, with Notice of Hearing filed.
Mar. 6,	Affidavit of Service filed.
Mar. 11,	Motion to Withdraw as Attorneys, with Notice of Hearing filed.
Mar. 22,	Order of Adjournment filed.
Mar. 25,	Answer to Order of Adjournment filed.

Docket Entries–Circuit Court

DATE	PROCEEDINGS
1968	
Mar. 25.	Affidavit of Mailing filed.
Apr. 11.	Withdrawal of Attorneys filed.
Apr. 11.	Order Authorizing Withdrawal filed.
Apr. 12.	Proof of Service filed.
Oct. 10.	Letter "Notice" for Jury Trial filed.
1969	
Jan. 24.	Notice of Appearance for Plaintiff filed.
May 6.	Notice of Taking Deposition filed.
May 6.	Proof of Mailing filed.
June 10.	Notice of Adjourned Deposition filed.
June 10.	Proof of Mailing filed.
June 19.	Amended Notice of Taking Deposition filed.
June 27.	Amended Notice of Taking Deposition filed.
June 27.	Proof of Mailing filed.
Aug. 20.	Deposition of Boyd Veenkant filed.
Aug. 22.	Clerk's Notice filed.
1970	
Feb. 27.	Notice of Taking Deposition filed.
Feb. 27.	Proof of Mailing filed.
Mar. 16.	Deposition of Dr. Harry E. Schneiter filed.
Mar. 16.	Clerk's Notice filed.
June 15.	Pretrial Statement filed.
June 15.	Clerk's Notice filed.
Aug. 4. 5. 6. 7.	Jury Trial. Verdict: No cause of Action for Defendant.

Docket Entries–Circuit Court

DATE	PROCEEDINGS
1970	
Aug. 11,	Judgment on General Verdict for Defendant filed.
Aug. 14,	Clerk's Notice filed.
Aug. 31,	Motion for New Trial filed (with Notice of Motion).
Aug. 31,	Defendant's bill of costs taxed at $99.90.
Sept. 2,	Clerk's Notice filed.
Dec. 7,	Order Denying Motion for New Trial filed.
1980	
Sept. 11,	Notice filed.
Sept. 11,	Notice to the Court Proof of Mailing filed.

I do hereby certify that listed above are all docket entries made and entered in the above entitled matter.

Dated at Allegan, Michigan, this
25th day of November, 1980.
(s) Dorothy Scott
Deputy Circuit Court Clerk

EXHIBIT 4

AFFIDAVIT OF CHARLES E. STARBUCK

STATE OF MICHIGAN)
) ss.
COUNTY OF KALAMAZOO)

NOW COMES, Charles E. Starbuck, Esquire, and first being duly sworn, deposes and states as follows:

1. That he was the attorney for Charles Armitage in the matter of Boyd Veenkant v Charles Armitage et al., Allegan County Circuit Court Case No. 66-21225-NI.

2. That said action was resolved by a Jury verdict for the Defendants of No Cause of Action.

3. That at no time subsequent to said Jury verdict did he draft or file any Motion for New Trial.

Further, the deponent saith not.

(s) Charles E. Starbuck, Esq.

On this 15th day of December, 1980, personally appeared before me, Charles E. Starbuck, Esq., and made an oath that he has read the foregoing Affidavit, by him subscribed, and that the contents thereof are true to the best of his knowledge, except as to those matters stated to be based on information and belief, as to which, he beliefs them to be true.

(s) H. Sue WerMeulen
NOTARY PUBLIC
Kalamazoo County, Michigan
My commission expires: 2-27-84

Complaint–Malpractice and Breach of Contract

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
Plaintiff,

VS. File NO. _____

MAURICE N. BLAKE, and
STEVEN RABINOVITZ,
Defendant's.

COMPLAINT
MALPRACTIE & BREACH OF CONTRACT.

NOW COMES Plaintiff, BOYD VEENKANT, IN PROPER PERSON, and shows unto this Honorable Court as follows:

(1)- That Plaintiff is a resident of the County of Allegan; and Defendant's have Law Office as follows—Maurice N. Blake, 2424 Buhl Building, Griswold at Congress, Detroit, Michigan 48226 and Steven Rabinovitz, Dequindre Office Plaza, 28091 Dequindre, Suite 206, Madision Heights, Michigan 48071:

(2) That Plaintiff went to the State Bar of Michigan and did pay the State Bar of Michigan, there fee to get this Plaintiff a attorney to represent him, being Atty. Maurice N. Blake.

(3) That Atty. Blake asked of this Plaintiff, if he could bring in a second attorney as a partner, which made a partnership and this Plaintiff gave his permission to Atty. Blake to bring in as a partner, Atty. Steven Rabinovitz and he did.

(4) That a ($1,000.00) thousand dollars was demanded by Atty. Blake of this Plaintiff and this Plaintiff forwarded the thousand to Atty. Blake to complete the enters or beginning of a Contract.

(5) That Atty. Blake asked this Plaintiff to bring his Court documents to his Office, which this Plintiff delivered them personally to Atty. Blakes Office so there would be no way of looseing a single document.

(6) This Plaintiff being the principal, he asked that the very first thing Atty. Blake, being his agent, is to get the Court case transcript he had paid for, which this Plaintiff furnished the cashed check, which this Plaintiff had forwarded to buy this Court case transcript of Case File NO. 2-1225 of Allegan County.

(7) That before a attorney can ask for a knew trail or Appeal a case, he has to have this transcript. Yes, and under the Michigan Court Rules, at least one copy has to be furnished with the Appeals Court in appealing a case.

(8) I futher state, in order to prove perjury under oath in this case 2-1225 or any other case, a transcript would be required.

(9) Another document I pulled out of my court cases documents I delivered to Atty. Blake was a Insurance Company's car accidents report, comming from this Plaintiff's Insurance Company agent and had been sent through the U.S. Mails to the home Office Inter-State Commerce. This Plaintiff instructed Atty. Blake my name had been placed upon this document by forgery and Atty. Blake stated, I can see that without any question.

(10) Another document inclosed, was a hand drafted copy of a document this Plaintiff found in the Circuit Court Clerks file, covering this Plaintiff's case 2-1225. That this Plaintiff made a hand drafted copy, becouse he had no money with him to pay for a Court photographic copy of this document. Then went back in a couple of days with money to buy a photographic copy of this document and it had already been removed to "Obstruct Justice". Yes, and this is one of the documents Atty. Blake and or Atty Rabinovitz were given and which is lost, wheather by destruction, theft or otherwise, by this partnership.

(11) One day this Plaintiff wrote to Atty. Blake and asked if he had gotten this Court case transcript and the results was, a box came in the mail with documents covering one case, less document numbered 101.

(12) Then this Plaintiff wrote back and asked where the rest of the documents were and so another box came from Atty. Rabinovitz with the following numbered bundles missing, which each bundle had one or more documents to the bundle. Here is a list of the missing bundles out of that box—1;2;3;5;6;7;8;9;10;11;12;13;14;15;18;19;22;30 and 40. and with still the number 101 being missing out of the other box. Therefore this Plaintiff wrote back to Atty. Blake and asked were the rest of my documents were.

(13) Then Atty. Rabinovitz sent the document number 101 missing out of the first box sent by envelope.

(14) I futher state, the missing documents are kneeded for the following Court cases. 2-1225; 2-2246; 66488; 5-5097 & 77294.

(15) That of this date, these two or one of these two defendants have the thousand dollars I advanced to them, covering the contract entered.

Wherefore, the Plaintiff claims a Judgment for the losted bundles of ducuments number above missing, wheather by destruction, theft or otherwise, if not returned or for the value thereof, and for further damages in the sum of $100,000.00 or more, due to the loss of the Court documents, which can effect all the Court cases number above, plus the $1,000.00, if it has not been returned before hand.

(s) Boyd Veenkant
In Proper Person
P.O. Box 115
Allegan, Michigan 49010
(Phone 673-4400)

Dated: July 18, 1979.

Appearance

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
Plaintiff,

vs.

No. 79 924 505
Hon. Irwin Burdick

MAURICE N. BLAKE, P.C., and
STEVEN RABINOVITZ,
Defendants.

APPEARANCE

TO THE CLERK OF THE COURT:

PLEASE ENTER my Appearance as attorney for defendant, MAURICE N. BLAKE, P.C., only, in the above entitled cause of action.

COLLINS & EINHORN, P.C.
Clayton F. Farrell (P 23414)
Attorney for Maurice N. Blake, P.C.
24700 Northwestern Hwy., Ste. 414
Southfield, Michigan 48075
355-4141

Dated: August 14, 1979.

TO: Mr. Boyd Veenkant
P.O. Box 115
Allegan, Michigan 49010

PLEASE TAKE NOTICE that I have this day entered my Appearance as attorney for defendant, MAURICE N. BLAKE, P.C., only, in the above entitled cause of action.

COLLINS & EINHORN, P.C.
Clayton F. Farrell (P 23414)
Attorney for Maurice N. Blake, P.C.
24700 Northwestern Hwy., Ste. 414
Southfield, Michigan 48075
355-4141

Dated: August 14, 1979.

Order of Accelerated Judgment

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
Plaintiff,

vs.

No. 79 924 505 CZ
Hon. Irwin Burdick

MAURICE N. BLAKE and
STEVEN RABINOVITZ,
Defendants.

ORDER OF ACCELERATED JUDGMENT, FOR MALPRACTICE, ONLY AS TO DEFENDANT MAURICE N. BLAKE, ONLY

At a session of said Court, held at City-County Building, Detroit, Wayne County, Michigan, on September 21, 1979.

PRESENT: Honorable Irwin H. Burdick
Circuit Court Judge

Upon Motion of Clayton F. Farrell, attorney for defendant Maurice N. Blake, only, for an Accelerated Judgment as to allegations of malpractice only, on behalf of defendant Maurice N. Blake, only, and against plaintiff, Boyd Veenkant, and the Court having heard oral argument, and further being fully advised in the premises;

NOW, THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that an Order of Accelerated Judgment be and the same hereby is entered on behalf of defendant Maurice N. Blake, only, and against plaintiff, Boyd Veenkant, as to allegations of malpractice only.

Claim of conversion is preserved.

(s) Irwin H. Burdick
Circuit Court Judge

Exhibit 2

EXHIBIT 2

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
Plaintiff,

vs.

No. 79 924 505 CZ
Hon. Irwin Burdick

MAURICE N. BLAKE and
STEVEN RABINOVITZ,
Defendants.

ORDER COMPELLING PLAINTIFF TO FILE LIST OF MISSING DOCUMENTS

At a session of said Court, held at City-County Building, Detroit, Wayne County, Michigan, on November 14, 1979.

PRESENT: Honorable Irwin H. Burdick
Circuit Court Judge

Upon request of John Franco, attorney for defendant Steven Rabinovitz, that plaintiff, Boyd Veenkant, be compelled to file a list of the documents that he claims have not been returned to him by defendants, and the Court having considered same, and being fully advised in the premises;

NOW, THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that within 120 days from September 21, 1979, plaintiff, Boyd Veenkant, shall file with the Court a list of the documents that he alleges were not returned to him by defendants, Maurice N. Blake and Steven Rabinovitz, and that in said list he shall describe each document with such specificity as to enable defendants to identify same.

(s) Irwin H. Burdick
Circuit Court Judge

EXHIBIT 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
Plaintiff,

vs.

File NO. 79 924 505 CZ
Hon. Irwin Burdick

MAURICE N. BLAKE, AND
STEVEN RABINOVITZ,
Defendant's.

PLINTIFF'S LIST OF PERSONAL PROPERTY THAT HAS NOT BEEN RETURNED TO HIM UNDER CONTRACT NO. 3 ENTERED ON APRIL 28, 1976

I Boyd Veenkant, Plaintiff points out, that on April 28, 1976 after entering into two other contracts with said Defendant or Defendant's, Boyd Veenkant entered into a third contract whereby the said Defendants were to absolutely return everything forwarded to them personally by Boyd Veenkant, by giving Boyd Veenkant a notice were to pick it up personally, that this could not be placed in the U.S. Mails to be returned. I give a "notice" of fact, that nothing was returned as the contract entered called for. That part that has been returned, was placed in the U.S. Mails, breaching the contract entered.

That to this day and date and being Janruary 3, 1980, and covering the personal property that Boyd Veenkant did forward, that has not been returned, which he can personally account for, which his agents have not returned are.

1—The hand written copy by Boyd Veenkant, of the document which was in the Allegan County Clerks (Circuit Court) records covering case File No. 2-1225, which also was removed from the Clerks case file, before a photocopy was made or was going to get made shortly after the hand copy was made. The hand copy covered the "MOTION

Exhibit 3

FOR NEW TRAIL AGGRAVATION RATHER THEN A RE-INJURY TO A PART OF THE BODY THAT WAS PREVISOULY INJURYED SLIGHTLY WITHOUT ANY SERIOUS CONSEQUENCE TO PLAINTIFF." This MOTION was by the Defendant's Attorney who was given the Judgment, by Atty. Starbuck Dated Monday Oct. 5, 1970.

2—On April 19, 1976, Boyd Veenkant was in the Office of Defendant Attorney Maurice N. Blake and entered into a contract to recover the ($1200.00) asked by Atty. Alphonse Lewis, Jr. to buy the court transcript covering case 2-1225 and this $1200.00 was advanced by the forwarding of a Kalamazzoo Savings and Loan Association, Otsego Michigan check, check NO. 307665. That attorney Maurice N. Blake asked of Boyd Veenkant for a Attorney cost of $1,000.00 to recover this court transcript payment so Boyd Veenkant could buy it and furnish it to him. That Boyd Veenkant did furnish this $1,000.00 to complete this contract as asked by Atty. Maurice N. Blake, by forwarding to him on April 28, 1976 a American National Bank check, check NO. 89, made payable to Defendant Maurice N. Blake in the amount of $1,000.00, The Memo states—Atty. cost., signed by Boyd Veenkant.

I Boyd Veenkant states, until this NO. 1 contract was carried out, Boyd Veenkant could not comply with the NO. 2 contract entered after this check was issued to Atty. Maurice N. Blake, on April 28, 1976 to complete the NO. 1 contract. Yes, just before the NO. 2 contract was brought up and discussed. That Atty. Maurice N. Blake was asked by Boyd Veenkant before signing this second or NO. 2 contract, that part of this $1,000.00 covering contract NO. 1 would be used to cover contract NO. 2 and Atty. Maurice N. Blake read off out of this contract (written) NO. 2, how it was to be paid. That I well copy out of this NO. 2 contract (a copy of which is in the Courts records) just what Atty. Blake read to me out of this contract as to how this NO. 2 contract calls for as to how it's to be paid. "I, Boyd Albert Veenkant agree to pay to Maurice N. Blake,

PC, the sum of FIFTY ($50.00) DOLLARS per hour, for the time spent by Mr. Blake and Steven Rabinovitz *in examining the Pleadings and evidence which I am to furnish them for the purpose of their making a determination whether or not to represent me in any of the pending legal proceedings in which I have been representing myself.*" IT IS FURTHER UNDERSTOOD that billings will be mailed weekly and payment is expected within one week of billing date.

Atty. Maurice N. Blake breached the NO. 1 contract and therefore Boyd Veenkant could not comply to the contract NO. 2 to furnish to them the pleadings, therefore no billings were ever sent to Boyd Veenkant covering contract NO. 2 to pay.

Therefore as of this day and date, being Janruary . 1980, the Defendant has not returned to Boyd Veenkant his personal property, and being the one thousand dollars ($1,000.00) he forwarded to complete contract NO. 1, which was breached.

I futher point out as bailor, I have asked of the Defendant for the return of the bailed property and being tangible personal property, that they have not returned and they are refusing to return it, both Defendant being State of Michigan licenced attorneys, breaching contract NO. 3 ente

I futher point out, the above stated conversion is "MALPRACTICE", for which Boyd Veenkant sued for in part and well continual to do. "law of the land . . . renders judgment only after trial." Dartmouth College - Woodward 4 Wheet, US 518,4 Ed 629 (1814), being Boyd Veenkant's Constitutional Rights.

(s) Boyd Veenkant, IN PROPER PERSON
P.O. BOX 115
Allegan, Michigan 49010
Phone - 673-4400

Dated: Janruary 3, 1980.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOYD VEENKANT,
Plaintiff,

v No. K 81 101 CA 4

JUDGE IRWIN H. BURDICK; JUDGE GEORGE R. CORSIGLIA; MAURICE N. BLAKE; STEVEN RABINOVITZ; CLAYTON F. FARRELL; and JOHN CESARE FRANCO,
Defendants.

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANTS BLAKE AND FARRELL'S MOTION FOR DISMISSAL

The pertinent facts have already been detailed in Defendants' Motion for Dismissal which was filed with this Court on/or about May 8, 1981 and is scheduled for oral argument on May 14, 1982. By way of this Supplemental Brief, Defendants wish to advise of additional developments which properly bear upon this Court's resolution of their Motion to Dismiss.

Recall that, on/or about July 23, 1979, Mr. Veenkant filed a lawsuit against Defendant attorneys Blake and Rabinovitz. That lawsuit was filed in the Wayne County Circuit Court and purported to state a claim for attorney malpractice and breach of contract, *Boyd Veenkant* v *Maurice N Blake & Steven Rabinovitz*, No. 79-924-505-CZ. Defendant attorney Farrell represented Mr. Blake in that action. Defendant attorney Franco represented Mr. Rabinovitz in the Wayne County action. Defendant Judge Irwin H. Burdick is the Wayne County Circuit Court Judge to whom the action was assigned.

On September 21, 1979, Judge Burdick granted accelerated judgment in Defendants' favor on all Plaintiff's malpractice and contract claims. Judge Burdick preserved the cause of action only as to a claim for conversion. Except for the additional Defendants and for the fact that Plaintiff has now apparently attempted to raise a number of federal statutory causes of action, Plaintiff's present complaint rests on the identical factual basis which gave rise to the Wayne County suit.

On November 24, 1981, the Wayne County case was mediated, as per the local court rule, before the Wayne County Mediation Tribunal. Plaintiff did not appear before the Mediation Panel. After review of the Defendant's Mediation Summary, and of the documentary exhibits presented, the three member Mediation Panel rendered its unanimous decision. It evaluated Plaintiff's case, for settlement purposes, at zero ($0.00) dollars. (See a copy of the Mediators' Evaluation attached as Exhibit I).

Mr. Veenkant did not reject the mediation evaluation. As provided by Wayne County Local Court Rule 403, if the evaluation is not rejected within 40 days, the evaluation is deemed accepted and an appropriate Judgment is to be entered by the Circuit Court. Though the 40 days had run by January 4, 1982, the zero Judgment was not entered by the Circuit Court in time to avert a January 20, 1982 trial date in the matter.

On January 20, 1982, the Wayne County case was called for trial before the Honorable Thomas Foley. Mr. Veenkant failed to appear. Therefore, Judge Foley entered an Order of Dismissal with prejudice as against Plaintiff. The basis of the dismissal was twofold: Plaintiff's acceptance of the mediation award, by his failure to reject same, and Plaintiff's failure to appear for trial. (See a copy of the Order of Dismissal attached as Exhibit II).

Pursuant to Michigan General Court Rule 803.1, a civil litigant must take his appeal as of right "not later than 20 days after the entry of the order appealed from". Thus, Plaintiff's period for appeal as of right ran by February 10, 1982. Plaintiff has not appealed entry of the Order of Dismissal, entered with prejudice, in his Wayne County cause. Thus, the Order in the Circuit Court matter stands as a final, unappealed judgment in favor of Defendants Blake and Rabinovitz.

Defendants submit that an additional reason for this Court to dismiss Plaintiff's Complaint in the within lawsuit, is that the factual basis for Plaintiff's suit has now been litigated to final conclusion in Defendants' favor.

Plaintiff's federal suit is grounded on the same loss and/or conversion of a "Motion for New Trial" document which Plaintiff believes once existed in the records of the Allegan County Circuit Court, a copy of which Plaintiff believes he once turned over to Defendant Blake. Any malpractice and conversion claim which might have arisen out of the alleged disappearance of that document has now been disposed of by the decision of Judge Foley in the Wayne County action. Under the most basic principles of *res judicata* and collateral estoppel, Plaintiff may not be allowed to relitigate these claims against Defendant Blake. In effect, that is what Plaintiff is attempting in this federal action—to get a second bite at the apple.

As to Plaintiff's claim against Defendant Farrell, the same argument is persuasive. Mr. Veenkant's complaint against Attorney Farrell is that Mr. Farrell had "notice" that the new trial document had been "converted" by Defendants Blake and Rabinovitz and that it had been "removed" from the Allegan County Court file, but that Mr. Farrell did not contact the proper authorities to "take action". The Wayne County dismissal stands as an unappealed judgment, deciding, with finality, that the allegedly

converted document will not support a cause of action. Just as this present federal action is fatally defective as to Defendant Blake, it must also be held to be fatally defective as to Mr. Farrell, whose only connection to the allegedly converted document was his serving as Mr. Blake's attorney in the Wayne County action.

Respectfully submitted,
COLLINS, EINHORN & FARRELL, P.C.
(s) Noreen L. Slank (P 31964)
Attorneys for Defendants Blake and Farrell
4000 Town Center, Suite 909
Southfield, Michigan 48075
(313) 355-4141

Dated: February 8, 1982

Mediation Board Evaluation

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COURTY OF WAYNE

BOYD VEENKANT

V NO. 79 924 505 CZ

MAURICE N. BLAKE

BOYD VEENKANT
Attorney for Plaintiff(s)

COLLINS & EINHORN
JOHN FRANCO
Attorney for Defendant(s)

TO THE PARTIES TO THIS LAWSUIT
AND THEIR COUNSEL:

The Mediation Board's evaluation was unanimous:

_X_ Yes ___ No

You are hereby notified that the Mediation Board consisting of three experienced trial attorneys having at least 5 years of actual practice experience has evaluated this case for settlement purposes at $ -0- .

When the board's evaluation is unanimous, and the plaintiff accepts the board's evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the evaluation of the board or pay actual costs.

When the board's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and

the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of mediation evaluation are added, is 10 percent greater than the board's evaluation in order to avoid the payment of actual costs to the defendant.

ACTUAL COSTS

Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial in Circuit Court, determined by the trial judge in accordance with the fee prevailing locally.

You are further notified that the *Tribunal Clerk must be notified in writing* of acceptance or rejection of the Mediation Board's evaluation within forty (40) days of the date of mailing of said evaluation. If the evaluation is not rejected within forty (40) days the evaluation shall be deemed to be accepted (NR) and an appropriate judgment will be entered by the court pursuant to L.C.R. 403.

Mediation Tribunal Clerk
1115 Lafayette Building
Detroit, Michigan 48226
224-5606

Order of Dismissal

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

BOYD VEENKANT,
IN PRO PER,

vs.

No. 79 924 505 CZ
Hon. Irwin H. Burdick

MAURICE N. BLAKE and
STEVEN RABINOVITZ,
Defendants.

ORDER OF DISMISSAL WITH PREJUDICE AND WITHOUT COSTS TO ANY PARTY

At a session of said Court held at City-County Building, Detroit, Wayne County, Michigan, on January 20, 1982.

PRESENT: Honorable Thomas J. Foley,
Circuit Court Judge

This matter having come on for Trial on the 20th day of January, 1982, at 9:00 a.m., and it appearing to the Court that this matter was mediated on November 24, 1981, and that a mediation award of zero ($0.00) dollars was unanimously entered in favor of plaintiff and against defendants; and it further appearing to the Court that neither plaintiff nor defendants rejected the award within the time provided, and that therefore the award is deemed accepted pursuant to LCR 403; further the matter was set and called for trial on January 20, 1982 and as of 10:40 am the Plaintiff had failed to appear;

NOW, THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff's cause of action be and the same hereby is dismissed with prejudice and without costs to any party.

(s) Thomas J. Foley
Circuit Court Judge

No. 82-1583
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BOYD VEENKANT,
Plaintiff-Appellant,

v.

JUDGE IRWIN H. BURDICK, JUDGE GEORGE R. CORSIGLIA, MAURICE N. BLAKE, STEVEN RABINOVITZ, CLAYTON F. FARRELL, AND JOHN CESARE FRANCO,
Defendant-Appellees

ORDER

BEFORE: KEITH, KENNEDY and JONES,
Circuit Judges

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and briefs of all parties, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals the district court order entered August 2, 1982, dismissing his civil rights complaint. Having carefully examined the district court record and the briefs of all parties, this Court concludes the district court did not err in its disposition of this case.

Accordingly, for the reasons stated in the district court memorandum entered August 2, 1982, the order of the district court is hereby affirmed. Rule 9(d)(2), Rules of the Sixth Circuit.

Based upon the record in this case and the briefs filed, we are convinced that this appeal is frivolous. This appeal amounts to little more than a continued abuse of process which raises no colorable legal or factual basis for the relief sought. It is totally lacking in merit, framed with no relev-

ant supporting law, conclusory in nature, and utter nonsense. Appellees have requested this Court award sanctions pursuant to Rule 38, Federal Rules of Appellate Procedure. Pursuant to 28 U.S.C. §1912 and Federal Rule of Appellate Procedure 38, we award double costs to appellees.

ENTERED BY ORDER OF THE COURT

(s) John P. Hehman
Clerk

ISSUED AS MANDATE: May 26, 1983

COSTS: APPELLEE TO RECOVER DOUBLE COSTS

PRINTING OF BRIEFS . . .	$160.86
	x 2
TOTAL	$323.72